PAGE 5

IN THE SUPREME COURT OF THE UNITED STATES

CASE NO. 79-6261

RECEIVED
APR 24 1980
OFFICE OF THE CLERK
SUPREME COURT, U.S.

MAY 8

JOEL JAFFER,
Etc.,

Petitioner,

-vs-

CITY OF MIAMI,
Etc.,Et al.,

Respondents.
_____/

ANSWER TO MOTION TO DISMISS

ORIGINAL COPY

Pro Se Petitioner Answers a Motion to Dismiss served upon him by mail:

1. The said Motion was not accompanied by a Notice or Form of Appearance when served upon the said Petitioner.

2. Joel Jaffer, Pro Se, has been a party appellant to these proceedings in the Florida Supreme Court.

3. The Bayshore Alert;Yes! Committee was inttially a party to some/ proceedings. At some stage in the state courts, the said Committee was denied leave to intervene and/or be maintained as a class. In the State of Florida, such parties may appeal such rulings adverse to their intervention and/or class maintainence. Bancroft v. Allen, 1937, 128 Fla. 14, 174 So. 749.

4. Petitions for Writ of Certiorari to a State Supreme Court involve only the actions of the said State Supreme Court. Cohens v. State of Virginia, 6 Wheat. 264.

5. Joel Jaffer has properly filed a Motion to Proceed In Forma Pauperis, as amended, and is the appellant/Petitioner in this court. His motion to rppresent co-appellants/in this cause below/ [redacted] overrides any imaginary State concern of the Appellees. Sperry v. Florida Bar, 373 U.S. 379.

6. This appeal/Petition consists of six cases, some of which were the product of properly consolidated reviews below.

7. Florida Supreme Court Case Numbers 57,786 and 57,787 are the subject of Petition for Writ of Cert. Case No. 79-6262 in this court.

8. The Appellees City of Miami and James G. Robertson apparently request notice to be given to all members of the purported class, to determine their financial/interest in the issues here raised. The Petitioner would have no objection to this request.

9. The actual property rights of the Petitioner are not at issue here. What is at issue is whether actions to determine those rights are fundamental or not, enough to override certain state concerns.

10. Paragraphs 1,2,3,4,5,6,7,9,10 of the Motion to Dismiss filed by Respondents City of Miami and James g. Robertson are thus irrelevant, immaterial and scandalous matter and should be stricken.

11. The Petitioner adopts argument contained in his "Reply Brief" on Jurisdiction filed in response to an Answer Brief-Motion to Dismiss &c. of Respondent Holywell, Inc. with regards to the Federal question pending before this court.

12. A lack of merit must first be shown before abuse of process may be alleged. Respondents show no such want of merit.in this Petition.

WHEREFORE, Petitioner prays that the Motion to Dismiss filed herein by Attorneys for the City of Miami and James G. Robertson be stricken and/or denied, and the Court take jurisdiction of this cause.

I HEREBY CERTIFY that a true copy hereof was this 22 day of April,1980 served by U.S. Mial, first class postage prepaid, to Miele Carter, Asst. City Atty.,174 E. Flagler St., Jack Rice,Esq., P.O.BOx 350838, Miami, Fla., and Hon. Jim Smith, Fla. Atty. General, Tallahassee,Fla.

I FURTHER CERTIFY that all persons required to be served have been served.

Submitted,

Joel Jaffer, Pro Se
Mailing Address:
2479 S.W. 13 St.
Miami, Fla. 33145

MAY 8 PAGE 5

IN THE SUPREME COURT OF THE UNITED STATES

CASE NO. 79-6261

RECEIVED
APR 25 1980
OFFICE OF THE CLERK
SUPREME COURT, U.S.

JOEL JAFFER, Etc., Et al.,

Appellant,

-vs-

CITY OF MIAMI, Etc.,
HOLYWELL CORP., Etc., EtAl.,

Appelllees.

APPELLANT'S BRIEF OPPOSING MOTION
TO DISMISS, ORIN THE ALTERNATIVE,
MOTION TO AFFIRM: [RULE 16 (4)]

PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF FLORIDA

Submitted,

Joel Jaffer, Pro Se
Mailing Address:
2479 S.W. 13 St.
Miami, Fla 33145

TABLE OF CONTENTS

	** Page **
Frontpiece	1
Table of Contents	2
Table of Citations	2
Restatement of the Facts	3
Argument	4
Certificate of Service	9

TABLE OF CITATIONS

Cohens v. State of Virginia 6 Wheat. 274	5,7,8
Cooper v. Aaron 358 U.S. 1	8
Draper v. Wahsington ___ U.S. ___	8
Boddie v. Connecticut 401 U.S. 371	6,7
Florida v. Mellon 273 U.S. 12	8
Goldberg v. Kelly 397 U.S. 254	7
Griswold v. Connecticut 381 U.S. 479	5
Illinois Centrl Ry.Co. v. Adams 180 U.S. 28	7
Lanier v. Nash 122 U.S. 630	7
Lee v. Delmar 66 So.2d 252	4
Maryland v. Wirtz 392 U.S. 183	8
Meltzer v. McCraw , 402 U.S. 954	7
N.A.A.C.P. v. Alabama, 377 U.S. 288	8
U.S. v. Kras, 409 U.S. 434	6
Watson v. Caldwell, 156 Fla. 618, 23 So.2d 855	4

RESTATEMENT OF THE FACTS.

On June 21, 1979, the circuit court dismissed Jaffer's appeal because he had not exhausted all of his administeative remedies, which he had no standing to file.

In a motion for rehearing of this apparently contradictory ruling, on June 29, 1979 Jaffer brought to the attention of th e court Article I, Section 21 of the Florida Constitution, which provides that the courts of the state shall be open for the redress of any injury "without sale, denial or delay". He also asked to be directed to the proper venue for his action, pursuant to Artciel V, Fla.Const., if he had been adjudged not to be a proper party in the said circuit court.

After this Motion for Rehearing was denied, on July 24th, Jaffer moved to Waive Prepayment of Costs on Appeal. In doing so, he plead,

> "Plaintiffs filed this appeal originally as insolvents. They likewise ask for the Court to Waive Prepayment of Costs On Appeal. "

This Motion was never ruled upon by the Circuit Cour t, which was the sbuject of much pleading in the District Court of Appeals, as will hereinafter be described.

In a concurrent Motion for Stay Pending Review, Jaffer stated:

> " Money has no bearing in a court of law. "

In a reply to the Appellees' responses to this Motion, July 30, :

> " this appeal * * * touched on * * * two of the most fundamental legal principles in the State of Florida, those being separation of powers and the right to appeal. * * *
>
> To hold that all persons dismissed from a love r cour t could not seek a stay of that order would be to deny persons organic rights to appeal. Kilbee v. Myrick,(1868) 12 Fla.416. * * * (Appellants) are merely in the position of assuring that the said development complies with regulations imposed upon it by the Legislature of the State of Florida. * * *

In defense of fundamental rights to t he said appeal, Jaffer enumerated "enjoying ~~[illegible]~~ and defending life and liberty, and pursuing happiness guaranteed him by Article I of the Florida Constitution," and

> "In Lee v. DelMar, 66 So.2d 252, the court said, ' There may be certain t rades, professions or occupations so cloth ed with the public interest that they may be regulated by the legislature in the public interest * * * The legislatute mush (sic) provide the yardstick of such regulation.'
> What is simply before this court * * * is adjudication of that yardstick and regulation. That the Fla. Land and Water Adjudicatory Commission is the sole adjudicator of that would be to place unlawful judicial powers upon a regulatory board. Watson v. caldwell, 156 Fla. 618, 23 So.2d 855. * * *
> Court fees have never been intended or held to determine the rights of the parties. The court has not held this appeal frivolous. "

The motion for stay was also never ruled upon by the circuit court.

The appeal then proceeded to the District Court of Appeal, third District of Florida. The Appellee Holywell again moved to dismiss that appeal, for what Jaffer claimed wase the precise issued involved in the circuit court's dismissal. Comparable and extensive argument ensued in the district court, which finally si mply dismissed for want of fees.

Appeal was then taken, by way of certiorari, to the Florida Supreme Cour t. Undaunted, Appellee Holywell moved to dismiss that appeal for the same reasons. Pleadings and argument before the Florida Supreme Cour t have been more adequately described in Jaffer's Petition- Jurisdictional statement, than in Appellee Holywell's Motion.

ARGUMENT

THE PETITION PRESENTS A SUBSTANTIAL FEDERAL QUESTION.

The Appellee Holywell, in the first portion of their argument, have proceeded apparently ignorant of the fact that this court has

treated Jaffer's, et al.'s notice of appeal as improvidently taken, and instead as a Petition for Writ of Certiorari. 28 U.S.C. 2101 et.seq. This is evident by the argument headings and, indeed, the very title of the motion taken from Rule 16, Rules of the Supreme Cour t of the United States, which governs motions to dismiss appeals.

However, this Court has styled Jaffer as the Petitioner. Nonetheless, we will consider these contentions of the "Appellee".

That Jaffer contested the validity of Chapter 57.081 and Fla.R.App.P. 9.430 as being, as applied to him and on their face, repugnant to t he Constitution and laws of the United States is plain and clear from the record, Jurisdictional Statement.

The Jaffer v. Brinker case was, admittedly, the only case which directly contested that validity in the circuit co urt. But Petition for Writ of Certiorari to a State Supreme Court is a review of the actions only of that (Jaffer) court, and will ordinarily not delve into the issues of first instance. Gohens v. State of Virginia, 6 Wheat. 274.

In this case, Jaffer raised constitutional issues in the circuit court in his Motion to Waive Costs by stating that, under the circumstances, "Money has no bearing in a court of law," &c. Such a statement undoubetly alleges an invidious discrimination and susepcet legal classificati on in the premises. Griswold v. Connecticut, 381 U.S. 479.

By the Circuit Court's not ruling upon this motion, and th e District Appeals court finally dismissing the appeal because the fee had not been paid is plain evidence that the District court passed upon the validity of the indigency provisions of the Florid a Court system.

But then, all of this was argued to the Florida Supreme Court, as the entire basis for its jurisdiction. Their dismissal of this issue is what is being reviewed by this court.

Jaffer plead that/ and he did indeed originally file this action in the circuit court under the insolvency statute. The cause was not dismissed because of a failure to comply fully with t hat statute. Thus, the Court rules here questioned are merely extensions of and modicems of a substantive, statutory and constitutional right, and which the Petitioner claims procedural encroachments broadly invade to the extent t hat the jurisdiction of this court is invoked. Such rules cannot enlarge or restrict Petitioner's fundamental rights. (Juris. Statement)

Which brings us to the question of the substance of the question on review to this court.

It is a reasonably well-settled fact that an indigent's right to appeal without costs, or to maintain an action wi thout costs, depends upon the type of action he wished to maintain. Here, Jaffer sought a review of a development order, accorded by Ch. 380, F.S.A. He did not have have standing to obtain an administrative hearing, so he appealed to the judicial branch of government instead.

Thus, the case is governed more by Boddie than by Kras. Petitioner has a "fundamental interest that is gained or lost depending on availability" of relief, which the ver y action sought to establish. Kras, supra. Furhher, there wa s no other remedy available to the Petitioner, by th e circuit court's very order.

The fundamental right on which Petitioner relies is more property-oriented than onan "area of economic or social wèèfare", Juris. Btatement. The Development Statute confers a right to appeal an adverse decision.

Such a right, once granted, cannot be diluted by the removal of judical review. Meltzer v. LeCraw, 402 U.S. 954. Although not firmly delineated by this court, the Florida Land and Water Adjudicatory Commission's usurpation of review in the courts would appear to be an agency action to revoke a right previously granted. Stock Yard Cases, 298 U.S. 38 at 84. The Miami City Commission does not thus qualify as a n agency, nor does t he hearing there comport with prodedural due process requirement of Goldberg v. Kelly, because the very appeal raises questions of law and presents a controversy over the procedure there. 397 U.S. 254.

But, as stated in the Cohens case, su pra, the discussion of these issues for the jurisdiction of this court is absurd under the authority of Boddie, not, as Appellees contend, because a marraige relationship is more fundamental than zoning rights, but because such a dismussion wou ld be the same as arguing the finer points of child custody and Gladys Boddie's goings on with her husband in order to determine jurisdiction.

The important issue is that an appeal of a dismissal based on lack pf court fees was itself dismissed because of a lack of court fees. Also, the appeals were dismissed for the same reasons as the original cause was dismissed. Going to the me rits of a dismissal in order to dismiss the appeal th ereof is a substantial Federal due process question, and will not be tolerated. Lanier v. Nash, 122 U.S. 630, Illinois Central Ry.Co. v. Adams, 180 U.S. 28.

In this sense, the Florida Supreme Court never reached the rationality or invidious discrimination imposed by the statute, because it dismissed the question. Thus, the right that has been denied the Petitioner is that to test a statute in a State Supreme Court to conform same to the Unit ed

States Constitution. The United Sattes Constitution is Law of the State. Florida v. Mellon, 273 U.S.12 . Interpretations of that Law by the United Sattes Supreme Court must be co nsidered as the Law of a State. Cooper v. Aaron, 358 U.S. 1. For a State Court to dismiss such a question is a denial of its authority in t he premises, which is contrary to the U.S. Constitution. Cohens v. Virginia, su pra, as well as the Florida Constitution itself.

There certainly can be no rationaljustification for this.* The interests which the State has overridden are governmenaal in character. Maryland v. Wirtz, 392 U.S. 183. They needlessly sweep broadly over and invade fundamental rights of Petitione r to contest a statute in its application and avail himself of the jurisdiction of the Highest court of a state. NAACP v. Alabama, 377 U$.S.288.

*The only case Lead that has been diminished is this one case!

The action of the State Supreme Court here is in itself an upholding of the statutes in question, without being a decision or otherwise the product of due process of law. Paupers do not necessarily foment frivolous litigation any more than black persons throw away their votes. To, in effect connect the two denied Petitione r of the equal protection of thw Law. Draper v. Washington, __ U.S. __ .

The Appellee's Motion itself goes to the merits of this cause in order to have it dismissed. Their argument seeks to justify the actions of the Florida Supreme Court on Federal grounds. As such, the Motion should be denied and the Court should take jurisdiction of th is cause.

Submitted.

Joel Jaffer, Pro Se Mailing Address:
2479 S.W. 13 St., Miami, Fla.

I HEREBY CERTIFY that a true copy of the foregoing Brief was mailed this 21 day of April,1980 to all parties required to be served. /s/ Joel Jaffer

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing Brief Opposigg Motion to Dismiss, or,alternately, Motion to Affirm, of the Appellants was served by mail, first class postage prepaid, this 21st day of April, 1980 to John Q. Aurell, 1401 Amerifirst Building, 1 S.E.3#rd Ave., and Mikele Carter, Esq.,174 E. Flagler St., both of Miami, Florida, 33131.

I FURTHER CERTIFY that no notice of appearnace was served upon the Appellants with service of the Appellee Holywell's Motion to Dismiss, &c.

MOTION FOR ORAL ARGUMENT

The Appellants hereby respectfully request oral argument before the Court for all pertinent and applicable deliberations in this cause.

Submitted,

Joel Jaffer, Pro Se
Mailing Address:
2479 S.W. 13 St.
Miami, Fla. 33145